

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the Department of the Environment, pursuant to the authority set forth in the District of Columbia Air Pollution Control Act of 1984 ("the Act"), Sections 5 and 6, as amended, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code § 8-101.06(c)), Mayor's Order 98-44, effective April 10, 1998, and Mayor's Order 2006-61, effective June 14, 2006, hereby gives notice of the intent to adopt the following amendments to Chapter 7 of Subtitle A: Air Quality, of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The proposed rules are necessary to further reduce volatile organic compound (VOC) emissions in the District. The proposed rules incorporate amendments to model rules designed to reduce ozone in the eastern United States and promulgated by the Ozone Transport Commission (OTC), an entity created by the federal Clean Air Act (42 U.S.C. 7506a). Since VOCs are precursors to ozone, all members of the OTC: Virginia, the District of Columbia, Maryland, Pennsylvania, Delaware, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, and Maine, have drafted similar rules as part of a regional strategy to reduce ozone.

The District originally adopted the OTC VOC model rules in April 2004 and first amended them in December 2004. This proposed rulemaking adds new sections to the VOC rules and amends many of the current sections. Specifically, section 708 is being repealed since all of the standards in that section have been addressed with more detail in sections 753 through 756. In addition this rulemaking proposes new VOC standards for certain consumer products, new VOC standards for adhesives and sealants, and adds approximately 39 definitions to section 799.

TITLE 20 DCMR (ENVIRONMENT) (FEBRUARY 1997), SUBTITLE A: AIR QUALITY, CHAPTER 7, VOLATILE ORGANIC COMPOUNDS is amended as follows:

708 SOLVENT CLEANING (DEGREASING) is repealed.

TITLE 20 DCMR (ENVIRONMENT) (FEBRUARY 1997), SUBTITLE A: AIR QUALITY, CHAPTER 7, VOLATILE ORGANIC COMPOUNDS is amended by deleting the words stricken through and adding the words underlined as follows:

719 CONSUMER PRODUCTS – GENERAL REQUIREMENTS

719.1 Sections 719 through ~~734~~ 737 apply to any person who sells, supplies, offers for sale, or manufactures consumer products on or after ~~January 1,~~

2005 the effective date specified in §720 for use in the District of Columbia, except as provided in §721.

719.2 For purposes of §§719 through ~~734~~ 737 and of any definitions in §799 applicable to §§719 through ~~734~~ 737 the District incorporates by reference rules and test methods from the California Air Resource Board (CARB), the South Coast Air Quality Management District (SCAQMD), and the American Society for Testing and Materials (ASTM), where specifically cited. These materials are incorporated in their versions current as of January 1, 2004 unless otherwise indicated in §§719 through ~~734~~ 737 and 799.

719.3 Each part of §§719 through ~~734~~ 737 shall be deemed severable, and in the event that any part is held to be invalid, the remainder shall continue in full force and effect.

720 CONSUMER PRODUCTS – VOC STANDARDS

720.1 Except as provided in §§ 721, 735, 736 and 737, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any consumer product, manufactured on or after the effective date in the following Table of Standards, which ~~that~~ contains VOCs in excess of the limits specified in the following Table of Standards ~~except as provided in §721:~~

Table of Standards: ~~Effective January 1, 2005~~ Percent volatile organic compounds by weight:

Product Category	<u>Effective date</u> <u>1/1/2005</u> Percent VOCs (by weight)	<u>Effective date</u> <u>1/1/2009</u>
<u>Adhesive Removers:</u>		
<u>Floor and Wall Covering</u>		<u>5</u>
<u>Gasket or Thread Locking</u>		<u>50</u>
<u>General Purpose</u>		<u>20</u>
<u>Specialty</u>		<u>70</u>
<u>Aerosol Adhesives:</u>		
<u>Aerosol</u> Mist spray	65	
<u>Aerosol</u> Web spray	55	
Special Purpose Spray Adhesives: Mounting, automotive engine compartment, and flexible vinyl	70	
Polystyrene foam and automotive		

Headliner	65	
Polyolefin and laminate repair / Edgebanding	60	
Construction, panel, and floor covering	15	
Contact	80	NA
<u>Contact General Purpose</u>		<u>55</u>
<u>Contact Special Purpose</u>		<u>80</u>
General purpose	10	
Structural waterproof	15	
Air Fresheners:		
Single-phase aerosols	30	
Double-phase aerosols	25	
<u>Liquids / pump sprays / gels</u>	<u>18</u>	
<u>Solids / semisolids</u>	<u>3</u>	
Antiperspirants		
Aerosol	40 HVOC 10 MVOC	
Non-Aerosol	0 HVOC 0 MVOC	
<u>Anti-static Product, non-aerosol</u>		<u>11</u>
Automotive Brake Cleaners	45	
Automotive Rubbing or Polishing Compound	17	
Automotive Wax, Polish, Sealant or Glaze		
Hard paste waxes	45	
Instant detailers	3	
All other forms	15	
Automotive Windshield Washer Fluids	35	
Bathroom and Tile Cleaners:		
Aerosols	7	
All other forms	5	
Bug and Tar Remover	40	
Carburetor or Fuel-Injection Air Intake Cleaners	45	
Carpet and Upholstery Cleaners:		
Aerosols	7	
Non-Aerosols (dilutables)	0.1	
Non-Aerosols (ready-to-use)	3.0	
Charcoal Lighter Material	see §727 730	
Cooking Spray:		
Aerosols	18	
Deodorants:		
Aerosol	0 HVOC 10 MVOC	

Non-Aerosol	0 HVOC 0 MVOC	
Dusting Aids: Aerosols All other forms	25 7	
<u>Electrical Cleaner</u>		<u>45</u>
<u>Electronic Cleaner</u>		<u>75</u>
Engine Degreasers: Aerosol Non-Aerosol	35 5	
Fabric Protectants	60	
<u>Fabric Refresher</u> Aerosol Non-Aerosol		<u>15</u> <u>6</u>
Floor Polishes / Waxes: Products for flexible flooring materials Products for nonresilient flooring Wood floor wax	7 10 90	
Floor Wax Strippers: Non-Aerosol	see §728 731	
<u>Footwear or Leather Care Products</u> Aerosol Solid Other Forms		<u>75</u> <u>55</u> <u>15</u>
Furniture Maintenance Products: Aerosols All other forms except solid or paste	17 7	
General Purpose Cleaners: Aerosols Non-Aerosols	10 4	
General Purpose Degreasers: Aerosols Non-Aerosols	<u>50</u> <u>4</u>	
Glass Cleaners: Aerosols Non-Aerosols	12 4	
<u>Graffiti Remover</u> Aerosols Non-Aerosol		<u>50</u> <u>30</u>
Hair Mousses	6	
Hairshines	55	
Hairsprays	55	
Hair Styling Gels	6	
<u>Hair Styling Products</u> Aerosol and Pump Sprays		<u>6</u>

<u>All Other Forms</u>		<u>2</u>
Heavy-Duty Hand Cleaners or Soaps	8	
Insecticides:		
Crawling bug (aerosol)	15	
Crawling bug (all other forms)	20	
Flea and tick	25	
Flying bug (aerosol)	25	
Flying bug (all other forms)	35	
Foggers	45	
Lawn and garden (all other forms)	20	
Lawn and garden (non-aerosol)	3	
Wasp and hornet	40	
Laundry Prewashes:		
Aerosols / solids	22	
All other forms	5	
Laundry Starch Products	5	
Metal Polishes / Cleansers	30	
Multi-Purpose Lubricants (excluding solid or semi-solid products)	50	
Nail Polish Removers	75	
Non-Selective Terrestrial Herbicides:		
Non-Aerosols	3	
Oven Cleaners:		
Aerosols / pump sprays	8	
Liquids	5	
Paint Remover or Strippers	50	
Penetrants	50	
Rubber and Vinyl Protectants:		
Non-Aerosols	3	
Aerosols	10	
Sealants and Caulking Compounds	4	
Shaving Creams	5	
<u>Shaving Gel</u>		<u>7</u>
Silicone-Based Multi-Purpose Lubricants (excluding solid or semi-solid products)	60	
Spot Removers:		
Aerosols	25	
Non-Aerosols	8	
Tire Sealants and Inflators	20	
<u>Toilet/Urinal Care</u>		
<u>Aerosols</u>		<u>10</u>
<u>Non-Aerosol</u>		<u>3</u>
Undercoatings:		
Aerosols	40	

Wood Cleaner		
Aerosol		<u>17</u>
Non-Aerosol		<u>4</u>

Note: NA = Not applicable after January 1, 2009

721

CONSUMER PRODUCTS – EXEMPTIONS FROM VOC STANDARDS

721.1

The following are exempt from the Table of Standards in §720:

- (a) Any consumer product manufactured in the District of Columbia for shipment and use outside of the District of Columbia;
- (b) A manufacturer or distributor who sells, supplies or offers for sale in the District of Columbia a consumer product that does not comply with the VOC standards specified in §720, provided that the manufacturer or distributor meets the requirements of this section and demonstrates that:
 - (1) The consumer product is intended for shipment and use outside of the District of Columbia; and
 - (2) The manufacturer or distributor has taken reasonable precautions to ensure that the consumer product is not distributed in the District of Columbia; and
- (c) Ethanol is exempt from the medium volatility organic compound (MVOC) content standards specified in §720 for antiperspirants or deodorants;
- (d) Fragrances up to a combined level of two percent (2%) by weight contained in any consumer product and colorants up to a combined level of two percent (2%) by weight contained in any antiperspirant or deodorant;
- (e) Antiperspirants or deodorants that contain VOCs of more than ten (10) carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two (2) millimeters of mercury (mm Hg) or less at twenty degrees Celsius (20°C);
- (f) Any LVP-VOC as defined in §799;
- (g) Air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under §799, or exempted under §721.1(f) above;

- (h) ~~Air fresheners and~~ Insecticides containing at least ninety-eight percent (98%) para-dichlorobenzene;
- (i) Until January 1, 2009, the VOC limits specified in the Table of Standards in §720 shall not apply to solid air fresheners containing at least 98% para-dichlorobenzene;
- (j) On or after January 1, 2009, the provisions of §720 apply to solid air fresheners containing para-dichlorobenzene;
- (~~ik~~) Adhesives sold in containers of one (1) fluid ounce or less;
- (~~jl~~) Bait station insecticides, which for the purpose of this section, are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than five percent (5%) active ingredients;
- (~~km~~) Any consumer product where the manufacturer has been granted an Alternative Control Plan (ACP) Agreement by CARB under the provisions in Subchapter 8.5, Article 4, §§94540-94555, of Title 17 of the California Code of Regulations. This exemption shall be for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products within the CARB ACP Agreement are listed in the Table of Standards in §720 and the manufacturer complies with ~~§732~~ 735, Alternative Control Plans;
- (~~ln~~) Any consumer product where the manufacturer has been granted an innovative product exemption by CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations. This exemption shall be for the period of time that the CARB Innovative Products exemption remains in effect provided that all consumer products within the CARB Innovative Products exemption are listed in the Table of Standards in §720 and the manufacturer complies with ~~§733~~ 736, Innovative Products Exemption; and
- (~~mo~~) Any consumer product where the manufacturer has been granted an alternative control plan agreement, an innovative product exemption or a variance by the Department pursuant to §§~~732~~ 735 through ~~734~~ 737.

722.1 For consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. §136-136y), the effective date of the VOC standards is one year after the date specified in §720.1, the Table of Standards in §720 is January 1, 2006.

~~722.2 The requirements of §§729.1 through 729.5, code dating of products, shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. §136).~~

723 CONSUMER PRODUCTS – PRODUCTS REQUIRING DILUTION

723.1 Consumer products wherein the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use shall comply with the following:

- (a) Limits specified in the Table of Standards in §720 shall apply to the product only after the minimum recommended dilution has taken place; and
- (b) Minimum recommended dilution shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

723.2 Consumer products wherein the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, shall comply with the limits specified in the Table of Standards in §720, only after the maximum recommended dilution has taken place.

724 CONSUMER PRODUCTS – OZONE DEPLETING COMPOUNDS

724.1 For any consumer product for which standards are specified under the Table of Standards in §720, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any consumer product which may contain any of the following ozone depleting compounds:
~~Consumer products for which standards are specified in the Table of Standards in §720, shall not contain any of the following ozone depleting compounds except as provided in §724.2 and §724.3:~~

- (a) CFC-11 (trichlorofluoromethane);
- (b) CFC-12 (dichlorodifluoromethane);

- (c) CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);
- (d) CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);
- (e) CFC-115 (chloropentafluoroethane);
- (f) Halon 1211 (bromochlorodifluoromethane);
- (g) Halon 1301 (bromotrifluoromethane);
- (h) Halon 2402 (dibromotetrafluoroethane);
- (i) HCFC-22 (chlorodifluoromethane);
- (j) HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);
- (k) HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);
- (l) HCFC-141b (1,1-dichloro-1-fluoroethane);
- (m) HCFC-142b (1-chloro-1, 1-difluoroethane); and
- (n) 1,1,1-trichloroethane, and carbon tetrachloride.

724.2 The requirements of this section shall not apply to any existing product formulation that complies with the Table of Standards in §720 or any existing product formulation that is reformulated to meet the Table of Standards in §720 provided the ozone depleting compound content of the reformulated product does not increase.

724.3 The requirements of this section shall not apply to any ozone depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

725 CONSUMER PRODUCTS – AEROSOL ADHESIVES

725.1 The standards for aerosol adhesives specified in the Table of Standards in §720 apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses.

725.2 Except as otherwise provided in §§ 722, 721, 736, and 737, no person shall sell, supply, offer for sale, use or manufacture for sale in the District of Columbia any aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

- ~~725.2~~ To qualify as a special purpose spray adhesive as listed in Table of Standards in §720 the product must meet one or more of the definitions specified in §799, but if the product label indicates that the product is suitable for use on any substrate or application not listed in §799, then the product shall be classified as either a web spray adhesive or a mist spray adhesive as listed in Table of Standards in §720.
- ~~725.3~~ In order to qualify as a "Special Purpose Spray Adhesive" the product must meet one or more definitions for "Special Purpose Spray Adhesive" specified in §799, but if the product label indicates that the product is suitable for use on any substrate or application not listed in one of the definitions for "Special Purpose Spray Adhesive," then the product shall be classified as either a "Web Spray Adhesive" or a "Mist Spray Adhesive."
- ~~725.3~~ 725.4 If a product meets more than one of the definitions specified in §799 for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive under §799, then the VOC limit should be the lowest applicable VOC limit specified in the Table of Standards in §720.
- ~~725.4~~ 725.5 No person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any aerosol adhesives that contain methylene chloride, perchloroethylene, or trichloroethylene.
- ~~725.5~~ 725.6 All aerosol adhesives must comply with the labeling requirements specified in §732.

726 CONSUMER PRODUCTS – ANTIPERSPIRANTS OR DEODORANTS

- 726.1 No person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any antiperspirant or deodorant which contains any compound that has been identified by CARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, §93000, as a toxic air contaminant.

727 CONSUMER PRODUCTS – CONTACT ADHESIVES, ELECTRONIC CLEANERS, FOOTWEAR AND LEATHER CARE PRODUCTS, AND GENERAL PURPOSE DEGREASERS

- 727.1 Except as provided in sections §§727.2 and 727.4, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any Contact Adhesive, Electronic Cleaner, Footwear or Leather Care

Product, or General Purpose Degreaser that contains methylene chloride, perchloroethylene, or trichloroethylene.

727.2 Contact Adhesives, Electronic Cleaners, Footwear or Leather Care Products, or General Purpose Degreasers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2009, may be sold, supplied, or offered for sale until January 1, 2012, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with §732.

727.3 Any person who sells or supplies a consumer product identified above in §727.1 must notify the purchaser of the product, in writing, that the sell-through period for that product will end on January 1, 2012, provided, however, that this notification must be given only if both of the following conditions are met:

(a) The product is sold or supplied through a distributor or retailer; and

(b) The product is sold or supplied on or after June 30, 2011.

727.4 The requirements of §§ 727.1 and 721.3 shall not apply to any Contact Adhesives, Electronic Cleaner, Footwear or Leather Care Product, or General Purpose Degreaser containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01% by weight.

728 CONSUMER PRODUCTS – ADHESIVE REMOVERS, ELECTRICAL CLEANERS, AND GRAFFITI REMOVERS

728.1 Except as provided in §§ 728.2 and 728.4, effective January 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any Adhesive Remover, Electrical Cleaner, or Graffiti Remover that contains methylene chloride, perchloroethylene, or trichloroethylene.

728.2 Adhesive Removers, Electrical Cleaners, and Graffiti Removers that contain methylene chloride, perchloroethylene, or trichloroethylene and were manufactured before January 1, 2009, may be sold, supplied, or offered for sale until January 1, 2012, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with §732.

728.3 Any person who sells or supplies a consumer product identified above in §728.1 must notify the purchaser of the product, in writing, that the sell-through period for that product will end on January 1, 2012, provided however, that this notification must be given only if both of the following conditions are met:

- (a) The product is sold or supplied through a distributor or retailer; and
- (b) The product is sold or supplied on or after June 30, 2011.

728.4 The requirements of §§ 728.1 and 728.3 shall not apply to any Adhesive Remover, Electrical Cleaner, or Graffiti Remover containing methylene chloride, perchloroethylene, or trichloroethylene that is present as an impurity in a combined amount equal to or less than 0.01% by weight.

729 CONSUMER PRODUCTS – SOLID AIR FRESHENERS AND TOILET / URINAL CARE PRODUCTS

729.1 Effective January 1, 2009, no person shall sell, supply, offer for sale, or manufacture for use in the District of Columbia any Solid Air Fresheners or Toilet/Urinal Care Products that contain para-dichlorobenzene, except that Solid Air Fresheners and Toilet/Urinal Care Products that contain para-dichlorobenzene and were manufactured before January 1, 2009 may be sold, supplied, or offered for sale until January 1, 2010, so long as the product container or package displays the date on which the product was manufactured, or a code indicating such date, in accordance with §732.

729.2 Any person who sells or supplies any Solid Air Freshener or Toilet/Urinal Care Product that contains para-dichlorobenzene must notify the purchaser of the product, in writing, that the sell-through period for the product will end on January 1, 2010, provided, however that this notification must be given only if both of the following conditions are met:

- (a) The product is sold or supplied to a distributor or retailer; and
- (b) The product is sold or supplied on or after June 30, 2009.

727 730 CONSUMER PRODUCTS – CHARCOAL LIGHTER MATERIALS

~~727.1~~ 730.1 No person shall sell, supply, or offer for sale any charcoal lighter material product unless at the time of the transaction:

- (a) The manufacturer can demonstrate that it has been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, §94509(h), of Title 17 of the California Code of Regulations;
 - (1) This certification remains in effect for the District of Columbia for as long as the CARB certification remains in effect; and
 - (2) Any manufacturer claiming such a certification on this basis must submit to the Department a copy of the certification decision ~~including~~ (i.e., the executive order), ~~including and~~ all conditions established by CARB applicable to the certification;
- (b) The manufacturer or distributor has been issued a currently effective certification by the Department pursuant to ~~this section §§ 730.2 through 730.4; provided that:~~
- (~~1c~~) The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable Alternative Control Plan (ACP) Agreement issued pursuant to §§ 730.2 through 730.4, and 735; this section; and
- (~~2d~~) The product usage directions for the charcoal lighter material are the same as those provided to the Department pursuant to §730.3. ~~this section.~~

~~727.2~~ 730.2 No charcoal lighter material formulation shall be certified under this section unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174, Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the South Coast Air Quality Management District Rule 1174 Testing Protocol);

- (a) The Department may approve alternative test procedures that are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Test Protocol; and
- (b) The provisions relating to LVP-VOC ~~as defined~~ in §799 and §721.1(f) shall not apply to any charcoal lighter material subject to the requirements of ~~§727~~ §§ 720 and 730.

~~727.3~~ 730.3 For certification of a charcoal lighter material formulation, the application shall be in writing and shall include, at a minimum, the following:

- (a) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol as required in ~~§727.2~~ 730.2;
- (b) The exact text and/or graphics that will appear on the charcoal lighter material's principal display panel, label, and any accompanying literature;
- (c) Clearly displayed pProduct usage instructions that accurately reflect the quantity of charcoal lighter material per pound that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for that product, unless:
 - (1) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes; or
 - (2) The charcoal lighter material is already incorporated into the charcoal, including but not limited to certain bag light, instant light, or match light products; and
- (d) For a charcoal lighter material which meets the criteria specified in section 730.3(c)(1), the usage instructions provided to the Department shall accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol for that product; and
- (~~de~~) Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified in an Alternative Control Plan (ACP) Agreement issued pursuant to ~~§732~~ 735.

~~727.4~~ 730.4 The Department shall comply with the following requirements for approving an application for certification:

- (a) Within thirty (30) days of receipt of an application, the Department shall advise the applicant in writing either that the application is complete or that specified additional information is required to make it complete;
- (b) Within thirty (30) days of receipt of additional information, the Department shall advise the applicant in writing either that the

application is complete, or that specified additional information or testing is still required before it can be deemed complete; and

- (c) If the Department finds that an application meets the requirements of this section, then an ACP Agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to ensure that the requirements of this section are met. The Department shall act on a complete application within ninety (90) days after the application is deemed complete.

~~727.5~~ 730.5 For any charcoal lighter material for which certification has been granted by the Department pursuant to this section, the applicant for certification shall notify the Department in writing within thirty (30) days of:

- (a) Any change in the usage directions, or
- (b) Any change in product formulation, test results, or any other information submitted pursuant to this section which may result in VOC emissions greater than 0.020 pound of VOC per start.

~~727.6~~ 730.6 If the Department determines that any certified charcoal lighter material formulation results in a VOC emission from the ignition of charcoal that is greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol, and the statistical analysis procedures contained therein, the Department shall revoke or modify the certification as necessary to ensure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

~~727.7~~ 730.7 The Department shall not revoke or modify a certification issued pursuant to this section without first affording the person granted the certification an opportunity for a hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code §2-501 *et seq.* to determine if the certification should be modified or revoked.

~~728~~ 731 CONSUMER PRODUCTS – FLOOR WAX STRIPPERS

~~728.1~~ 731.1 No person shall sell, supply, offer for sale, or manufacture for use in District of Columbia any floor wax stripper unless the following requirements are met:

- (a) The label of each non-aerosol floor wax stripper specifies a dilution ratio for light or medium build-up of polish that results in

an as-used VOC concentration of three percent (3%) by weight or less;

- (b) The label of each non-aerosol floor wax stripper specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of twelve percent (12%) by weight or less, if the floor wax stripper is also intended to be used for removal of heavy build-up of polish; and
- (c) The terms “light build-up”, “medium build-up” or “heavy build-up” are not specifically required on the label, as long as comparable terminology is used.

729 732

CONSUMER PRODUCTS – LABELING OF CONTENTS

729.1 732.1

Each manufacturer of a consumer product subject to §§719 through ~~728~~ 731 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date.

732.2

A manufacturer who uses the following code to indicate the date of manufacture shall not be subject to the requirements of §732.7, if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where:

“YY” = two digits representing the year in which the product was manufactured; and

“DDD” = three digits representing the day of the year on which the product was manufactured, with “001” representing the first day of the year, “002” representing the second day of the year, and so forth (i.e. the “Julian date”).

729.2 732.3

The date or date-code information shall be displayed on each consumer product container or package no later than ~~nine (9)~~ twelve (12) months prior to the effective date of the applicable standard specified in the Table of Standards in §720.

729.3 732.4

The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable by simply

removing the cap/cover without irreversibly disassembling any part of the container or packaging.

732.5 For the purposes of this section, information may be displayed on the bottom of the container as long as it is clearly legible without removing any product packaging.

~~729.4~~ No person shall erase, alter, deface or otherwise remove or make illegible any date or date code information from any regulated product container without the express authorization of the manufacturer.

732.6 The requirements of §§ 732.1 through 732.4 shall not apply to products containing VOCs at 0.10% by weight or less, or products exempted from the definition of VOCs in §799.

~~729.5~~ 732.7 If a manufacturer uses a code to indicate ~~If a code indicating~~ the date of manufacture is used, for any consumer product subject to §720, the manufacturer shall provide an explanation of the date portion of the code to the Department no later than ~~nine (9)~~ twelve (12) months prior to the effective date of the applicable standard specified in the Table of Standards in §720.

732.8 If a manufacturer changes any code indicating the date of manufacture for any consumer product subject to §732.7, an explanation of the modified code must be submitted to the Department before any products displaying the modified code are sold, supplied, or offered for sale in the District of Columbia.

732.9 No person shall erase, alter, deface, or otherwise remove or make illegible any date or code indicating the date of manufacture from any regulated product container without the express authorization of the manufacturer.

732.10 Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

~~729.6~~ The requirements of §§~~729.1~~ through ~~729.5~~ shall not apply to:

~~(a) Products containing no VOCs or containing VOCs at 0.10% by weight or less; and~~

~~(b) Consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. §136).~~

~~729.7~~ 732.11 Notwithstanding the definition of the term "product category" in §799, if anywhere on the principal display panel of any consumer product manufactured before January 1, 2009, or any FIFRA registered insecticide

manufactured before January 1, 2010, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in the Table of Standards in §720, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners, and antiperspirant or deodorant products and insecticide foggers.

732.12 Notwithstanding the definition of "product category" in §799, if anywhere on the container or packaging of any consumer product manufactured on or after January 1, 2009, or any FIFRA registered insecticide manufactured on or after January 1, 2010, or any sticker or label affixed thereto, any representation is made that the product may be used, or is suitable for use as a consumer product for which a lower VOC content limit is specified in the Table of Standards in §720, then the lowest VOC limit shall apply. This requirement does not apply to general all purpose cleaners, antiperspirant or deodorant and insecticide foggers.

~~729.8~~ 732.13 Both the manufacturer and responsible party for each aerosol adhesive, adhesive remover, electronic cleaner, electrical cleaner, energized electrical cleaner, and contact adhesive product subject to §§719 through ~~734~~ 737 shall comply with ~~§§729.1~~ 732.1 through ~~729.8~~ 732.12 and ~~§730~~ 733 and ensure that all consumer products clearly display the following information on the container for each product which is manufactured on or after the effective date for the category specified in the table of standards in §720:

- (a) The ~~aerosol adhesive~~ product category as specified in §720 or an abbreviation of the category;
- (b) The VOC standard for the product as specified in the Table of Standards in §720, except for Energized Electrical Cleaner, expressed as a percentage of weight, unless the product is included in an alternative control plan approved by the Department, as provided in §732.12, and the product exceeds the applicable VOC standard; with the following exceptions:
 - (1) If the product is included in an approved Alternative Control Plan (ACP) pursuant to ~~§732~~ 735, the product shall be labeled with the term "ACP" or "ACP product"; or
 - (2) If the product is classified as a special purpose spray adhesive, the substrate and /or application or an abbreviation of the substrate / application that qualifies the product as special purpose shall be displayed; and

- (c) An explanation of the abbreviation used pursuant to paragraph (a) must be filed with the Department before the abbreviation is used;
- (d) The information required in this section, shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging; and
- (a) No person shall remove, alter, conceal, or deface the information required in this section prior to final sale of the product.

730 733**CONSUMER PRODUCTS – REPORTING REQUIREMENTS****730.1**

~~Any person who sells, supplies, offers for sale, or manufactures consumer products for use in the District of Columbia shall comply with the following reporting requirements:~~

733.1

~~(a)~~—Upon ninety (90) days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify. Such report may include, but is including but not limited to all or part of the following information:

- ~~(1a)~~ ~~The name of the responsible party and the party's address, telephone number, and designated contact person;~~
The company name, address, telephone number, and designated contact person of the responsible party;
- (2b) Any claim of confidentiality made pursuant to applicable District of Columbia confidentiality requirements in 20 DCMR 106;
- (3c) The product brand name for each consumer product subject to reporting ~~and upon request by the Department;~~
- (4d) The product category to which the consumer product belongs pursuant to the Table of Standards in §720;
- (5e) The applicable product form(s) listed separately; as a Household Product, Industrial & Institutional Product, or both;
- (f) An identification of each product brand name and form as a “Household Product”, “Industrial and Institutional Product”, or both;

- (6g) Separate District of Columbia sales calculated in VOC pounds per year, to the nearest pound, and the method used to calculate District of Columbia sales for each product form;
- (7h) For ~~registrations~~ information submitted by ~~two~~ (2) ~~multiple~~ companies, an identification of the each company which is submitting relevant data separate from that submitted by the responsible party; ~~All registration information from both companies shall be submitted by the date specified in paragraph (a) of this section;~~
- (8i) For each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1%):
- (A1) Total Table B compounds;
 - (B2) Total LVP-VOCs that are not fragrances;
 - (C3) Total of all other carbon-containing compounds that are not fragrances;
 - (D4) Total of all non-carbon-containing compounds;
 - (E5) Total fragrance;
 - (F6) For products containing greater than two percent (2%) by weight fragrance the percent of fragrance that are LVP-VOCs; and the percent of fragrance that are all other carbon-containing compounds; and
 - (G7) Total Paradichlorobenzene;
- (9j) For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstracts Service (CAS) number, of the following:
- (A1) Each Table B compound; and
 - (B2) Each LVP-VOC that is not a fragrance;
- (10k) If applicable, the weight percent comprised of propellant for each product; and
- (11l) If applicable, an identification of the type of propellant indicating whether it is Type A, Type B, Type C, or a blend of each type;

733.2 (b) ~~————~~In addition to the requirements of ~~subparagraph (a)(9) of this subsection, §733.1(j),~~ the responsible party shall report or arrange to have reported to the Department the net percent by weight of each ozone-depleting compound that is:

(1a) Listed in §724.1; and

(2b) Contained in a product subject to reporting under ~~paragraph (a) of this subsection~~ 733.1 in any amount greater than 0.1% by weight;

733.3 If the responsible party does not have or does not provide the information requested in sections 733.1 and 733.2, the Department may require the reporting of this information by the person that has the information including, but not limited to, any formulator, manufacturer, supplier, parent company, private labeler, distributor, or repackager.

733.4 (e) ~~————~~All information submitted by ~~responsible parties~~ any person pursuant to §733 ~~this subsection~~ shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106; and

733.5 (d) ~~————~~Consumer products that contain perchloroethylene or methylene chloride shall comply with the following special reporting requirements:

(1a) The requirements of this ~~subsection~~ section shall apply to all responsible parties for consumer products that are subject to the Table of Standards in §720 and contain perchloroethylene or methylene chloride and Energized Electrical Cleansers as defined in §799, that contain perchloroethylene or methylene chloride;

(2b) For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0 percent or more by weight, exclusive of the container or packaging, of either perchloroethylene or methylene chloride;

(3c) For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold in District of Columbia during each calendar year, beginning with the year 2005, and ending with the year 2010:

(A1) The product brand name and a copy of the product label with legible usage instructions;

(B2) The product category to which the consumer product belongs pursuant to the Table of Standards in §720;

- (~~E~~3) The applicable product form(s) listed separately; ~~as a Household Product, Industrial & Institutional Product, or both~~;
 - (~~D~~4) For each product form listed in subparagraph (~~d~~)(3)(~~C~~) of this subsection, the total sales in the District of Columbia during the calendar year, to the nearest pound in VOCs, exclusive of the container or packaging, and the method used for calculating the District of Columbia sales; and
 - (~~E~~5) The weight percent, to the nearest one-tenth of a percent (0.1%), of perchloroethylene and methylene chloride in the consumer product; and
- (4d) The information specified in subparagraph (~~d~~)(3) (c) of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.

731 734**CONSUMER PRODUCTS – TEST METHODS****731.1 734.1**

Testing to determine compliance with the requirements of §§ 720 through 734 737 shall be performed using CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, and as last amended on September 3, 1999, May 5, 2005, including any subsequent amendments, incorporated herein by reference. The requirements of Sections 3.5, 3.6, and 3.7 of CARB Method 310 define a process for the initial determination of VOC content, the determination of LVP VOC status of compounds and mixtures, and the final determination of VOC content, and are incorporated in paragraphs (a) through (c) of this subsection as follows:

- (a) Pursuant to Section 3.5 of CARB Method 310, Initial Determination of VOC Content, the ~~manufacturer or responsible party~~ Department shall determine the VOC content pursuant to Sections 3.2 and 3.3 of CARB Method 310. Only those components with concentrations equal to or greater than 0.1 percent by weight shall be reported:
 - (1) Pursuant to Section 3.5.1 of CARB Method 310, using the appropriate formula specified in Section 4 of CARB Method 310, the ~~manufacturer or responsible party~~

Department shall make an initial determination of whether the product meets the applicable VOC standards specified in CARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Department may require additional testing to confirm the initial results;

- (2) Pursuant to Section 3.5.2 of CARB Method 310, if the results obtained under Section 3.5.1 of CARB Method 310 show that the product does not meet the applicable VOC standards, the Department shall request that the product manufacturer or responsible party supply product formulation data. The manufacturer or responsible party shall supply the requested information. Information submitted to the Department may be claimed as confidential; such information will be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106;
 - (3) Pursuant to Section 3.5.3 of CARB Method 310, if the information supplied by the manufacturer or responsible party shows that the product does not meet the applicable VOC standards, then the Department will take appropriate enforcement action; and
 - (4) Pursuant to Section 3.5.4 of CARB Method 310, if the manufacturer or responsible party fails to provide formulation data as specified in Section 3.5.2 of CARB Method 310, the initial determination of VOC content under Section 3.5 of CARB Method 310 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of District of Columbia regulations;
- (b) Pursuant to Section 3.6 of CARB Method 310, Determination of the LVP-VOC Status of Compounds and Mixtures, Section 3.6 of CARB Method 310 does not apply to antiperspirants and deodorants or aerosol coating products because there is no LVP-VOC exemption for these products;
- (1) Pursuant to Section 3.6.1 of CARB Method 310, Formulation Data, if the vapor pressure is unknown, the following ASTM methods may be used to determine the LVP-VOC status of compounds and mixtures: ASTM D 86-9604b (~~April 10, 1996~~), ASTM D 850-9300 (~~April 15, 1993~~), ASTM D 1078-9701 (~~July 10, 1997~~), ASTM D

2879-97 (~~April 10, 1997~~), as modified in Appendix B to Method 310, ASTM D 2887-9701 (~~April 10, 1997~~) and ASTM E 1719-97 (~~March 10, 1997~~), including any subsequent amendments;

- (2) Pursuant to Section 3.6.2 of CARB Method 310, LVP-VOC Status of Compounds or Mixtures, the Department will test a sample of the LVP-VOC used in the product formulation to determine the boiling point for a compound or for a mixture;
 - (A) If the boiling point exceeds two hundred sixteen degrees Celsius (216°C), the compound or mixture is an LVP-VOC;
 - (B) If the boiling point is less than 216°C, then the weight percent of the mixture that boils above 216°C is an LVP-VOC;
 - (C) The Department will use the nearest five percent (5%) distillation cut that is greater than 216°C as determined under Section 3.6.1 of CARB Method 310 to determine the percentage of the mixture qualifying as an LVP-VOC; and
- (3) Pursuant to Section 3.6.3 of CARB Method 310, Reference Method for Identification of LVP-VOC Compounds and Mixtures, if a product does not qualify as an LVP-VOC under Section 3.6.2 of CARB Method 310, the ~~manufacturer or responsible party~~ Department will test a sample of the compound or mixture used in a products formulation utilizing one or both of the following: ASTM D 2879-97, as modified in Appendix B to Method 310, and ASTM E 1719-97, to determine if the compound or mixture meets the CARB requirements in ~~Subchapter 8.5, §94508(7891)(A)~~ of Title 17 of the California Code of Regulations including any subsequent amendments; and
- (c) Pursuant to Section 3.7 of CARB Method 310, Final Determination of VOC Content, if a product's compliance status is not satisfactorily resolved under Sections 3.5 and 3.6 of CARB Method 310, the ~~manufacturer or responsible party~~ Department ~~must will~~ conduct further analyses and testing as necessary to verify the formulation data;

- (1) Pursuant to Section 3.7.1 of CARB Method 310, if the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for a violation of the VOC standards will be taken;
- (2) Pursuant to Section 3.7.2 of CARB Method 310, if the Department is unable to verify the accuracy of the supplied formulation data, then the Department will request that the product manufacturer or responsible party supply information to explain the discrepancy; and
- (3) Pursuant to Section 3.7.3 of CARB Method 310, if there exists a discrepancy that cannot be resolved between the results of CARB Method 310 and the supplied formulation data, then the results of CARB Method 310 shall take precedence over the supplied formulation data. The results of CARB Method 310 shall then determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of District of Columbia regulations.

~~731.2~~ 734.2 Alternative methods that are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Department.

~~731.3~~ 734.3 Testing to determine compliance with the requirements of §§~~731~~ 734 through ~~734~~ 737 may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

- (a) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three (3) years;
- (b) For the purposes of this section, the VOC content shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{B - C}{A} \times 100$$

where:

A = total net weight of unit, excluding container and packaging;

B = total weight of all VOCs, as defined in §799, per unit;

C = total weight of VOCs exempted under §721, per unit;

- (c) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of District of Columbia regulations.

~~731.4~~ 734.4 Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90(2000)e1, ~~(May 25, 1990)~~ including and subsequent amendments, which is incorporated by reference herein.

~~731.5~~ 734.5 ~~Compliance determinations for charcoal lighter material products shall comply with the following:~~

- (a) — Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including any subsequent amendments, which is incorporated by reference herein;

734.6 (b) — Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-~~9004b~~ (Sept. 28, 1990), including any subsequent amendments, which is incorporated by reference herein.

~~731.6~~ 734.7 No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other tests, processes, or records used in connection with product manufacture.

~~732~~ 735 CONSUMER PRODUCTS – ALTERNATIVE CONTROL PLANS

~~732.1~~ 735.1 This section provides an alternative method to comply with the Table of Standards specified in §720. This alternative is provided by allowing responsible parties the option of voluntarily entering into separate alternative control plan (ACP) Agreements for consumer products, identified in §§719 through ~~728~~ 731. Only responsible ACP parties for consumer products may enter into an ACP.

~~732.2~~ 735.2 Any manufacturer of consumer products which has ~~Any manufacturer claiming an ACP Agreement on the basis of having~~ been granted an ACP Agreement by CARB under the provisions in Subchapter 8.5, Article 4, §§94540-94555, of Title 17 of the California Code of Regulations, shall be exempt from the Table of Standards in §720 for the period of time that the CARB ACP Agreement remains in effect provided that all ACP Products within the CARB ACP Agreement are contained in the Table of Standards in §720 of this chapter. Any manufacturer claiming such an ACP Agreement on this basis must submit to the Department a copy of the CARB ACP decision including the executive order and all conditions established by CARB applicable to the exemption.

~~732.3~~ 735.3 Manufacturers that have been granted an ACP Agreement under the ACP provision in Subchapter 8.5, Article 4, §§94540-94555, of Title 17 of the California Code of Regulations, based on California specific data, or that have not been granted an exemption by the CARB may apply to the Department for an ACP Agreement in accordance with ~~§732.4~~ 735.4.

~~732.4~~ 735.4 An application for an ACP shall be submitted in writing to the Department by the responsible ACP party and shall contain all of the following information:

- (a) An identification of the contact persons, phone numbers, names and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP Agreement;
- (b) A statement ~~that~~ of whether the responsible ACP party is a small business or a one-product business, as defined in §799;
- (c) A listing of the exact product brand name, form, available variations including but not limited to flavors, scents, colors, and sizes, and applicable product categories for each distinct product that is proposed for inclusion in the ACP;
- (d) A demonstration to the satisfaction of the Department that the enforceable sales records used by the responsible ACP party to track product sales for each proposed ACP product identified in paragraph (c) of this subsection, meet the minimum criteria of seventy five percent (75%) of the gross District of Columbia sales as specified in subparagraph (d)(5) of this subsection. To provide this demonstration, the responsible ACP party shall meet all of the following requirements:
 - (1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will

provide information that will be used to determine the enforceable sales;

- (2) Determine the enforceable sales of each product using enforceable sales records as defined in §799;
 - (3) Demonstrate to the satisfaction of the Department the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;
 - (4) Calculate the percentage of the gross District of Columbia sales, as defined in §799, that is comprised of enforceable sales; and
 - (5) Determine which ACP products have enforceable sales that are seventy-five percent (75%) or more of the gross District of Columbia sales. Only ACP products meeting this criteria shall be allowed to be sold in District of Columbia under an ACP;
- (e) For each of the ACP products identified in subparagraph (d)(5) of this subsection include:
- (1) Legible copies of the existing labels for each product; and
 - (2) The VOC content and LVP content for each product for two (2) different time periods, as follows:
 - (A) At the time the application for an ACP is submitted; and
 - (B) At any time within the four (4) years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent ($\pm 10\%$) of the VOC or LVP contents reported in subparagraph (e)(2)(A) of this subsection;
- (f) A written commitment obligating the responsible ACP party to date code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five (5) working days after the date an approved ACP is signed by the Department;

- (g) An operational plan covering all the products identified under subparagraph (d)(5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:
- (1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP Agreement approving an ACP;
 - (A) The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than three hundred sixty-five (365) days; and
 - (B) The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for ACP products shall be reported to the Department at the same time and at the same frequency;
 - (2) An identification of specific enforceable sales records to be provided to the Department for enforcing the provisions of §§ 719 through ~~734~~ 737 and the ACP Agreement approving an ACP. The enforceable sales records shall be provided to the Department no later than the compliance period dates specified in subparagraph (g)(1) of this subsection;
 - (3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP parties that they will be transferring the surplus reductions to the small business or one-product business upon approval of the ACP;
 - (4) For each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period;
 - (5) The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision including repeatability and reproducibility, calculated for each specified method;

(6) The projected enforceable sales for each ACP product and the different VOC contents for each compliance period that the ACP will be in effect;

(67) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading, if applicable, that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e. by ACP reformulation) ~~by, but not limited to, ACP reformulation or surplus trading~~;

(A) This demonstration shall use the equations specified in §799 for projecting the ACP emissions and ACP Limits during each compliance period; and

(B) This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the District of Columbia during each compliance period;

(78) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of §§719 through ~~734~~ 737;

(89) Written explanations of the date-codes that will be displayed on each ACP product container or packaging;

(910) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP; and

(4011) A reconciliation of shortfalls plan that commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain:

- (A) A clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP Limit will be completely reconciled within ninety (90) days from the date the shortfall is determined;
 - (B) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this paragraph; and
 - (C) A commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled; and
- (h) A declaration, signed by a legal representative for the responsible ACP party, stating that all information and operational plans submitted with the ACP application are true and correct.

~~732.5~~ 735.5 In accordance with the time periods specified in ~~§732.7~~ 735.7, the Department shall issue an ACP Agreement approving an ACP application that meets the requirements of §§719 through ~~734~~ 737. The Department shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in the Table of Standards in §720. The ACP Agreement shall also include:

- (a) Only those ACP products for which the enforceable sales are at least seventy five percent (75%) of the gross District of Columbia sales, as determined in ~~§732.4~~ 735.4(d);
- (b) A reconciliation of shortfalls plan meeting the requirements of ~~§732.4~~ 734.4(g)(10); and
- (c) Operational terms, conditions, and data to be reported to the Department to ensure that all requirements of §§719 through ~~734~~ 736 are met.

~~732.6~~ 735.6 The Department shall not approve an ACP submitted by a responsible ACP party if the Department determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in §§719 through ~~728~~ 731, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

~~732.7~~ 735.7 Unless the Department and the responsible party mutually agree to a different period of action, the Department shall take appropriate action on an ACP application within the following time periods:

- (a) Within thirty (30) days of receipt of an ACP application, the Department shall inform the applicant in writing that either:
 - (1) The application is complete and accepted for filing; or
 - (2) The application is deficient, and identifies the specific information required to make the application complete;
- (b) Within thirty (30) days of receipt of additional information provided in response to a determination that an ACP application is deficient, the Department shall inform the applicant in writing that either:
 - (1) The additional information is sufficient to make the application complete, and the application is accepted for filing; or
 - (2) The application is deficient, and identifies the specific information required to make the application complete;
- (c) If the Department finds that an application meets the requirements of §735.4 of this chapter, then the Department shall issue an ACP Agreement in accordance with the requirements of §735.
- (d) The Department shall act to approve or disapprove a complete application within ninety (90) days after the application is deemed complete; and
- ~~(d) — Before the end of each time period specified in this section, the Department and the responsible ACP party may mutually agree to a longer time period to take the appropriate action.~~

~~732.8~~ 735.8 All information specified in the ACP Agreement shall be maintained by the responsible ACP party for a minimum of three (3) years after such records are generated and shall meet the following requirements:

- (a) Such records shall be clearly legible and maintained in good condition during this period; and
- (b) The records specified in ~~§732.4~~ 735.4 shall be made available to the Department:

- (1) Immediately upon request, during an on-site visit to a responsible ACP party;
- (2) Within five (5) working days after receipt of a written request from the Department; or
- (3) Within a time period mutually agreed upon by both the Department and the responsible ACP party.

~~732.9~~ 735.9 Any person who commits a violation of this chapter is subject to the penalties specified in 20 DCMR 105. Failure to meet any condition of an applicable ACP Agreement shall constitute a single, separate violation for each day until such requirement or condition is satisfied, unless otherwise provided in paragraphs (a) through (h) of this subsection:

- (a) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation for each day that the approved ACP is in effect;
- (b) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product and which is included in the ACP Agreement approving an ACP shall constitute a single, separate violation for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the District of Columbia;
- (c) Any of the following actions shall each constitute a single, separate violation for each day after the applicable deadline until the requirement is satisfied:

- (1) Failure to report data to the Department including but not limited to missing data or failure to report data accurately in writing regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified in the applicable ACP Agreement;
 - (2) False reporting of any information submitted to the Department for determining compliance with the ACP requirements;
 - (3) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP Agreement, within thirty (30) days from the date of written notification of a shortfall by the Department; and
 - (4) Failure to completely reconcile the shortfall as specified in the ACP Agreement, within ninety (90) days from the date of written notification of a shortfall by the Department;
- (d) False reporting or failure to report any of the information specified in ~~§732.10~~ 735.10, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation for each day during the time period for which the surplus reductions are claimed to be valid;
- (e) Except as provided in ~~§732.9~~ 735.9(f), any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation for each day of the applicable compliance period. The Department shall determine whether an exceedance of the ACP limit has occurred as follows:
- (1) If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP Agreement approving an ACP, then the Department shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period; and
 - (2) If the responsible ACP party has failed to provide all the required information specified in the ACP Agreement for an applicable compliance period, the Department shall determine whether an exceedance of the ACP limit has occurred as follows:

- (A) For the missing data days, the Department shall calculate the total maximum historical emissions, as specified in §799;
 - (B) For the remaining portion of the compliance period which are not missing data days, the Department shall calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;
 - (C) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subparagraph (e)(2)(A) of this subsection, and the emissions determined pursuant to subparagraph (e)(2)(B) of this subsection;
 - (D) The Department shall calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subparagraph (e)(2)(B) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subparagraph (e)(2)(A) of this subsection, shall be zero (0); and
 - (E) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subparagraph (e)(2)(C) of this subsection exceeds the ACP limit, determined pursuant to subparagraph (e)(2)(D) of this subsection;
- (f) If a violation specified in paragraph (e) of this section occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP \text{ Emissions} - ACP \text{ Limit}) \times 1 \text{ Violation}/40 \text{ Pounds}$$

where:

NEV	= number of ACP Limit violations;
ACP Emissions	= the ACP Emissions for the compliance period;
ACP Limit	= the ACP Limit for the compliance period; and

The responsible ACP party may determine the number of ACP Limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP Agreement approving the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP Limit violations pursuant to this subsection;

- (g) In assessing the amount of penalties for any violation occurring pursuant to paragraphs (a) through (f) of this section, the circumstances identified in applicable District of Columbia health and safety laws and regulations shall be taken into consideration; and
- (h) A cause of action against a responsible party under this section shall be deemed to accrue on the date(s) when the records establishing the violation are received by the Department.
- (hi) The responsible ACP party is fully liable for compliance with the requirements of this subsection, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this subsection.

~~732.10~~ 735.10 The Department shall issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, any surplus reductions achieved by a responsible ACP party operating under an ACP. All surplus reductions shall be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, according to the following provisions:

- (a) Surplus reduction certificates shall not constitute instruments, securities, or any other form of property;
- (b) For the purposes of this regulation, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in the Table of Standards in §720 may not be used to generate surplus reductions;
- (c) Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP;
- (d) Surplus reductions are valid only after the Department has issued an ACP Agreement pursuant to ~~§732~~ 735;

- (e) Surplus reductions issued by the Department may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to ~~§732.17~~ 735.17;
- (f) Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;
- (g) Only small or one-product businesses selling products under an approved ACP may purchase surplus reductions, except as provided in ~~§732.10~~ 735.10(h)(2). An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase;
- (h) While valid, surplus reductions can be used only for the following purposes:
 - (1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or
 - (2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the Department pursuant to ~~§732.4~~ 735.4(g)(4011);
- (i) A valid surplus reduction shall be in effect starting five (5) days after the date of issuance by the Department, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period;
- (j) At least five (5) working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

- (1) The date the transfer is to become effective;
- (2) The date the surplus reductions being traded are due to expire;
- (3) The amount in pounds of VOCs of surplus reductions that are being transferred;
- (4) The total purchase price paid by the buyer for the surplus reductions;
- (5) The contact persons, names of the companies, street and mail addresses, and telephone numbers of the responsible ACP parties involved in the trading of the surplus reductions; and
- (6) A copy of the District of Columbia-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions;
 - (A) The copy shall show the amount of any remaining non-traded surplus reductions, if applicable, and their expiration date; and
 - (B) The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section; and
- (k) Surplus reduction credits shall only be traded between ACP parties for consumer products.

~~732.11~~ 735.11 The use of limited-use surplus reduction credits for early reformulations of ACP products shall comply with the following provisions:

- (a) For the purposes of this section, early reformulation means an ACP product that is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale in the District of Columbia for the first time during the one-year (365 day) period immediately prior to the date wherein the application for a proposed ACP is submitted to the District. Early reformulation does not include any reformulated ACP product that is sold, supplied, or offered for sale in the District of Columbia

more than one year prior to the date on which the ACP application is submitted to the Department;

(b) If requested in the application for an ACP, the Department shall, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that all of the following documentation has been submitted by the responsible ACP party to the satisfaction of the Department:

- (1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product, or below the applicable VOC standard specified in the Table of Standards in §720, whichever is the lesser of the two;
- (2) Accurate documentation demonstrating that the early reformulated ACP product was sold in District of Columbia retail outlets within the time period specified in paragraph (a) of this section;
- (3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records as defined in §799, and which demonstrate that the enforceable sales for the ACP product are at least seventy-five percent (75%) of the gross District of Columbia sales for the product, as specified in ~~§732.4~~ 735.4(d); and
- (4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in ~~§732.4 §§~~ 735.4(c)-(d), 735.4(g)(8)-(9) and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical accuracy and precision of the test methods as specified in §735.4(g)(3)-(4);

(c) Surplus reduction credits issued pursuant to this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

where:

SR = Surplus Reductions for the ACP product, expressed to the nearest pound;

Enforceable

Sales = the Enforceable Sales for the early reformulated ACP product, expressed to the nearest pound of ACP product;

VOC

Content_{initial} = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in §720, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product;

VOC

Content_{final} = the VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product; and

- (d) The use of surplus reduction credits issued pursuant to this section shall be subject to all of the following provisions:
- (1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP Agreement approving an ACP, and shall not be used for any other purpose;
 - (2) Surplus reduction credits shall not be transferred to, or used by, any other responsible ACP party; and
 - (3) Except as provided in this section, surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in ~~§732.10~~ 735.10.

~~732.12~~ 735.12 At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the ACP Agreement approving the ACP. Upon receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination;

- (a) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP Agreement approving the ACP, within thirty (30) days from the date of written notification of a shortfall by the District;

- (b) All shortfalls shall be completely reconciled within ninety (90) days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP; and
- (c) All requirements specified in the ACP Agreement approving an ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

~~732.13~~ 735.13 For modifications to the ACP that do not need Department pre-approval, the responsible ACP party shall notify the Department, in writing, of any change in an ACP product's name, formulation, form, function, applicable product categories, VOC content, LVP content, date-codes, or recommended product usage directions, no later than fifteen (15) days from the date such a change occurs. For each modification, the notification shall fully explain the following:

- (a) The nature of the modification;
- (b) The extent to which the ACP product formulation, VOC content, LVP Content, or recommended usage directions will be changed;
- (c) The extent to which the ACP emissions and ACP limit specified in the ACP Agreement will be changed for the applicable compliance period; and
- (d) The effective date and corresponding date-codes for the modification.

~~732.14~~ 735.14 Modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP Agreement approving the ACP require Department pre-approval and shall comply with the following requirements:

- (a) Any such proposed modifications shall be fully described in writing and forwarded to the Department;
- (b) The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of §§719 through ~~734~~ 737; and
- (c) The Department shall act on the proposed modifications using the procedure set forth in ~~§732.7~~ 735.7. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time that any proposed modification is approved in writing by the Department.

~~732.15~~ 735.15 Except as otherwise provided in §§~~732.13~~ 735.13 and ~~732.14~~ 735.14, the responsible ACP party shall notify the Department, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of §~~732~~ 735. The responsible ACP party shall provide such notification to the Department no later than fifteen (15) working days from the date such information is known to the responsible ACP party.

~~732.16~~ 735.16 ~~The District may modify the ACP under the following conditions To ensure that the ACP meets all the requirements of this chapter and that the ACP emissions will not exceed the ACP limit the District shall modify the ACP under the following conditions as necessary:~~

- (a) If the District determines that:
 - (1) The enforceable sales for an ACP product are no longer at least seventy-five percent (75%) of the gross District of Columbia sales for that product; or
 - (2) The information submitted pursuant to the approval process set forth in §~~732~~ 735 is no longer valid; or
 - (3) ~~The ACP meets all requirements of §§719 through 734 and that the ACP emissions will not exceed the ACP limit~~ The ACP emissions are exceeding the ACP limit specified in the ACP Agreement approving an ACP;
- (b) If the responsible ACP party has had an opportunity for a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*, to determine if the ACP should be modified; and
- (c) If any applicable VOC standards specified in the Table of Standards in §720 are modified by the California Air Resources Board (CARB) in a future rule making, the Department shall modify the ACP limit specified in the ACP Agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

~~732.17~~ 735.17 An ACP shall remain in effect until or unless the following occurs:

- (a) The ACP reaches the expiration date specified in the ACP Agreement;

- (b) The ACP is modified by the responsible ACP party and approved by the Department, as provided in §§~~732.13~~ 735.13 and ~~732.14~~ 735.14;
- (c) The ACP is modified by the Department, as provided in §~~732.16~~ 735.16;
- (d) The ACP includes a product for which the VOC standard specified in the Table of Standards in §720 is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date of the modified standard; or
- (e) The ACP is cancelled pursuant to §~~732.18~~ 735.18.

~~732.18~~ 735.18 The Department shall cancel an ACP if any of the following circumstances occur:

- (a) The responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;
- (b) The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is twenty percent (20%) or more of the applicable ACP limit, meaning that the ACP Emissions exceed the ACP Limit by 20.0% or more;
- (c) The responsible ACP party fails to meet the requirements of §~~732.12~~ 735.12 within the time periods specified in §~~732.12~~ 735.12; or
- (d) The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

~~732.19~~ 735.19 The Department shall not cancel an ACP pursuant to §~~732.18~~ 735.18 without first affording the responsible ACP party an opportunity for a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*, to determine if the ACP should be canceled.

~~732.20~~ 735.20 The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

- (a) All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of ~~§732.12~~ 735.12; and
- (b) All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in the Table of Standards in §720 immediately upon the effective date of ACP cancellation.

~~732.21~~ 735.21 Any violations incurred pursuant to ~~§732.9~~ 735.9 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to §§~~732.13~~ 735.13 through ~~732.18~~ 735.18.

~~732.22~~ 735.22 The information required by ~~§732.4~~ 735.4(a), ~~§732.4~~ 735.4(b), and ~~§732.10~~ 735.10 is public information that may not be claimed as confidential. All other information submitted to the Department to meet the requirements of this regulation shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106.

~~732.23~~ 735.23 A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

- (a) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP Agreement;
 - (1) The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties; and
 - (2) The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and telephone numbers of the responsible parties involved in the transfer; and
- (b) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP Agreement.

~~733~~ 736 CONSUMER PRODUCTS – INNOVATIVE PRODUCTS EXEMPTION

~~733.1~~ 736.1 Any manufacturer claiming an exemption from the Table of Standards in §720 based on a CARB Innovative Products exemption under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or

Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations, must submit to the Department a copy of the CARB Innovative Product exemption decision, including the executive order and all conditions established by CARB applicable to the exemption.

~~733.2~~ 736.2 Manufacturers of consumer products that have been granted an Innovative Products exemption under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations based on California specific data, or that have not been granted an exemption by CARB may apply for an Innovative Products exemption from the District of Columbia if the product meets the following criteria:

- (a) The manufacturer demonstrates by clear and convincing evidence that due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:
- (1) The VOC emissions from a representative consumer product which complies with the VOC limits specified in the Table of Standards in §720; or
 - (2) The calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in the Table of Standards in §720; and
 - (3) VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} / \text{VOC}_{NC}$$

where:

E_R = The VOC emissions from the non-complying representative product, had it been reformulated;

E_{NC} = The VOC emissions from the non-complying representative product in its current formulation;

VOC_{STD} = The VOC limit specified in the Table of Standards in §720;

VOC_{NC} = The VOC content of the non-complying product in its current formulation;

- (b) If a manufacturer demonstrates that the equation in paragraph (a) of this section yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method that accurately calculates emissions may be used upon approval of the Department;
- (c) For the purposes of this section, representative consumer product means a consumer product that meets all of the following criteria:
 - (1) The representative product shall be subject to the same VOC limit in the Table of Standards in §720 as the innovative product;
 - (2) The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form that does not exist in the product category at the time the application is made; and
 - (3) The representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry;
- (d) To apply for an innovative products exemption under this section, a manufacturer shall submit a written application to the Department, which includes:
 - (1) The supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage; and
 - (2) Any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content;
- (e) The Department shall comply with the following process in responding to applications for exemptions:
 - (1) All information submitted by a manufacturer pursuant to paragraph (d) shall be handled in accordance with the

District of Columbia confidentiality requirements in 20 DCMR 106;

- (2) Within thirty (30) days of receipt of the exemption application the Department shall determine whether an application is complete;
- (3) Within ninety (90) days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of §720 will be permitted;
 - (A) The applicant and the Department may mutually agree to a longer time period for reaching a decision; and
 - (B) Additional supporting documentation may be submitted by the applicant before a decision is reached;
- (4) The Department shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from the product will meet the emissions reductions specified in subparagraph (a)(1), and that such emissions reductions can be enforced; and
- (5) In granting an exemption for a product, the Department shall establish conditions that are enforceable;
 - (A) These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Department to be necessary;
 - (B) The Department shall also specify the test methods for determining conformance to the conditions established; and
 - (C) The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures;
- (f) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Department in writing within thirty (30) days of any change in the product

formulation or recommended product usage directions, and shall also notify the Department within thirty (30) days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application;

- (g) If the VOC limits specified in the Table of Standards in §720 are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category shall have no force and effect as of the effective date of the modified VOC standard, except those innovative products that have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least sixty (60) days before the effective date of such limits; and
- (h) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may modify or revoke the exemption as necessary to ensure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing held in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*

734 737

CONSUMER PRODUCTS – VARIANCE REQUESTS

734.1 737.1

Any person who cannot comply with the requirements set forth in §720, and §§722 through ~~728~~ 731 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Department for a variance according to the following requirements:

- (a) The variance application shall include:
 - (1) The specific grounds upon which the variance is sought;
 - (2) The proposed date(s) by which compliance with the provisions of §§720, and 722 through ~~728~~ 731 will be achieved; and
 - (3) A compliance report reasonably detailing the methods by which compliance will be achieved;

- (b) Upon receipt of a variance application containing the information required in paragraph (a), the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in §§720 and 722 through ~~728~~ 731 is necessary and will be permitted according to the following requirements:
 - (1) A hearing shall be initiated no later than seventy-five (75) days after receipt of a variance application;
 - (2) Notice of the time and place of the hearing shall:
 - (A) Be sent to the applicant by certified mail not less than thirty (30) days prior to the hearing;
 - (B) Be submitted for publication in the District of Columbia Register and sent to every person who requests such notice, not less than thirty (30) days prior to the hearing; and
 - (C) State that the parties may, but need not be, represented by counsel at the hearing;
 - (3) At least thirty (30) days prior to the hearing, the variance application shall be made available to the public for inspection; and
 - (4) Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered;
- (c) Information submitted to the Department by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106. The Department may consider such confidential information in reaching a decision on a variance application;
- (d) No variance shall be granted unless all of the following findings are made:
 - (1) Because of reasons beyond the reasonable control of the applicant, requiring compliance with §§720 and 722 through ~~728~~ 731 would result in extraordinary economic hardship;

- (2) The public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and
- (3) The compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible;
- (e) Any variance order issued by the Department shall specify a final compliance date by which the requirements of §§720 and 722 through ~~728~~ 731 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to ensure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of applicable District of Columbia health and safety laws and regulations;
- (f) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance; and
- (b) Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 720 and 722 through ~~728~~ 731 after holding a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*

738 ADHESIVES AND SEALANTS – GENERAL REQUIREMENTS

738.1 This section applies to any person who, on or after January 1, 2009, supplies, sells, offers for sale, manufactures for sale, or uses or applies adhesives, sealants, or adhesive or sealant primers, except as provided in §740 and §§ 738 through 743.

738.2 For purposes of §§ 738 through 743 and of any definitions in §799 applicable to §§ 738 through 743, the District incorporates by reference rules and test methods from the California Air Resource Board (CARB), the South Coast Air Quality Management District (SCAQMD), and the American Society for Testing and Materials (ASTM), where specifically cited. These materials are incorporated in their versions current as of January 1, 2004 unless otherwise indicated in §§ 738 through 743 and §799.

739 ADHESIVES AND SEALANTS – VOC STANDARDS

739.1 On and after January 1, 2009, no person shall sell, supply, offer for sale in the District of Columbia any adhesive, sealant, adhesive primer or sealant primer manufactured on or after January 1, 2009, or manufacture for sale in the District of Columbia any adhesive, sealant, adhesive primer or sealant primer in excess of the applicable VOC content limits specified in Table 1, except as provided in §§ 739.5 and 740.

739.2 On and after January 1, 2009, no person shall use or apply any adhesive, sealant, adhesive primer or sealant primer within the District of Columbia in excess of the applicable VOC content limits specified below, except as provided in §§739.5 and 740:

VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives Applied to Particular Substrates.

<u>Adhesive, sealant, adhesive primer or sealant primer category</u>	<u>VOC content limit (grams VOC per liter*)</u>
<u>CATEGORY 1: ADHESIVES</u>	<u>VOC Limits in (g/l)</u>
<u>ABS Welding</u>	<u>400</u>
<u>Ceramic tile installation</u>	<u>130</u>
<u>Computer diskette jacket manufacturing</u>	<u>850</u>
<u>Contact Bond</u>	<u>250</u>
<u>Cove base installation</u>	<u>150</u>
<u>CPVC welding</u>	<u>490</u>
<u>Indoor floor covering installation</u>	<u>150</u>
<u>Metal to urethane/rubber molding or casting</u>	<u>850</u>
<u>Multipurpose construction</u>	<u>200</u>
<u>Non-membrane roof installation/repair</u>	<u>300</u>
<u>Other plastic cement welding</u>	<u>510</u>
<u>Outdoor floor covering installation</u>	<u>250</u>
<u>PVC welding</u>	<u>510</u>
<u>Single-ply roof membrane installation/repair</u>	<u>250</u>
<u>Structural glazing</u>	<u>100</u>

<u>Thin metal laminating</u>	<u>780</u>
<u>Tire retread</u>	<u>100</u>
<u>Perimeter bonded sheet vinyl flooring installation</u>	<u>660</u>
<u>Waterproof Resorcinol Glue</u>	<u>170</u>
<u>Sheet-Applied Rubber installation</u>	<u>850</u>
<u>CATEGORY 2: SEALANTS</u>	<u>VOC Limits in (g/l)</u>
<u>Architectural</u>	<u>250</u>
<u>Marine deck</u>	<u>760</u>
<u>Non-membrane roof installation / repair</u>	<u>300</u>
<u>Roadway</u>	<u>250</u>
<u>Single-ply roof membrane</u>	<u>450</u>
<u>Other</u>	<u>420</u>
<u>CATEGORY 3: ADHESIVE PRIMERS</u>	<u>VOC Limits in (g/l)</u>
<u>Automotive glass</u>	<u>700</u>
<u>Plastic cement welding</u>	<u>650</u>
<u>Single-ply roof membrane</u>	<u>250</u>
<u>Traffic marking tape</u>	<u>150</u>
<u>Other</u>	<u>250</u>
<u>CATEGORY 4: SEALANT PRIMERS</u>	<u>VOC Limits in (g/l)</u>
<u>Architectural – Non-porous</u>	<u>250</u>
<u>Architectural – Porous</u>	<u>775</u>
<u>Marine Deck</u>	<u>760</u>
<u>Other</u>	<u>750</u>
<u>CATEGORY 5: ADHESIVES APPLIED TO PARTICULAR SUBSTRATES</u>	<u>VOC Limits in (g/l)</u>
<u>Flexible vinyl</u>	<u>250</u>
<u>Fiberglass</u>	<u>200</u>

<u>Metal</u>	<u>30</u>
<u>Porous material</u>	<u>120</u>
<u>Rubber</u>	<u>250</u>
<u>Other substrates</u>	<u>250</u>

* The VOC content is determined as the weight of volatile organic compounds, less water and exempt compounds as specified in §742.

739.3 The VOC content limits in §739.2 for adhesives applied to particular substrates (category 5), shall apply as follows:

- (a) If an operator uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in §739.2, such specific limit is applicable rather than an adhesive-to-substrate limit; and
- (b) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

739.4 Any person subject to this rule using a surface preparation or cleanup solvent shall:

- (a) Except as provided in paragraph (b) of this section for single-ply roofing, not use materials containing VOCs for surface preparation, unless the VOC content of the surface preparation solvent is less than 70 grams per liter (g/l);
- (b) If a surface preparation solvent is used in applying single-ply roofing, not use materials for surface preparation containing VOCs, unless the composite vapor pressure, excluding water and exempt compounds, of the surface preparation solvent does not exceed 45 mm of Hg at 20 degrees Celsius;
- (c) Except as provided in paragraph (d) of this section, not use materials containing VOCs for the removal of adhesives, sealants, or adhesive or sealant primers from surfaces, other than spray application equipment, unless the composite vapor pressure of the solvent used is less than 45 mm of Hg at 20 degrees Celsius; and
- (d) Remove an adhesive, sealant, adhesive primer or sealant primer from the parts of spray application equipment by:
 - (1) An enclosed cleaning system, or an equivalent cleaning system as determined by the SCAQMD's "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," dated October 3, 1989,

- (2) Using a solvent with a VOC content of 70 grams of VOC per liter of material, or less, or
- (3) Soaking parts containing dried adhesive in a solvent as long as the composite vapor pressure, excluding water and exempt compounds, of the solvent is 9.5 mm of Hg at 20 degrees Celsius or less and is kept in a closed container, which shall be closed except when depositing or removing parts of materials from the container.

739.5 A person using an adhesive, sealant, adhesive primer or sealant primer subject to this rule may comply with §739.2 and §739.4 of this chapter using add-on air pollution control equipment if such equipment meets the following requirements:

- (a) The VOC emissions from the use of all adhesives, sealants, adhesive primers or sealant primers subject to this rule are reduced by an overall capture and control efficiency of at least 85% by weight;
- (b) The combustion temperature is continuously monitored if a thermal incinerator is operated;
- (c) Inlet and exhaust gas temperatures are continuously monitored if a catalytic incinerator is operated;
- (d) Control device efficiency is continuously monitored when a carbon absorber or control device other than a thermal or catalytic incinerator is operated; and
- (e) Operation records sufficient to demonstrate compliance with the requirements of this section are maintained as required by §741 of this rule.

739.6 Any person using adhesives, sealants, adhesive primers, sealant primers, surface preparation or clean-up solvents subject to this rule shall store or dispose of all absorbent materials, such as cloth or paper, which are moistened with adhesives, sealants, primers or solvents subject to this rule, in non-absorbent containers that shall be closed except when placing materials in or removing materials from the container.

739.7 No person shall solicit, require the use or specify the application of any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent if such use or application results in a violation of the provisions 20 DCMR Chapter 7. The prohibition of this subdivision shall

apply to all written or oral contracts under which any adhesive, sealant, adhesive primer, sealant primer, surface preparation or clean-up solvent subject to this rule is to be used at any location in the District of Columbia.

740 **ADHESIVES AND SEALANTS – EXEMPTIONS AND EXCEPTIONS**

740.1 The provisions of 20 DCMR Chapter 7 shall not apply to the use or sale of the following compounds:

- (a) Adhesives, sealants, adhesive primers or sealant primers being tested or evaluated in any research and development, quality assurance or analytical laboratory, provided records are maintained as required in §741 of this chapter;
- (b) Adhesives, sealants, adhesive primers and sealant primers that are subject to 20 DCMR §720;
- (c) Adhesives and sealants that contain less than 20 grams of VOC per liter of adhesive or sealants, less water and less exempt compounds, as applied;
- (d) Cyanoacrylate adhesives;
- (e) Adhesives, sealants, adhesive primers or sealant primers that are sold or supplied by the manufacturer or supplier in containers with a net volume of 16 fluid ounces or less, or a net weight of one pound or less, except plastic cement welding adhesives and contact adhesives; and
- (f) Contact adhesives that are sold or supplied by the manufacturer or supplier in containers with a net volume of one gallon or less.

740.2 The requirements of this rule shall not apply to the use of adhesives, sealants, adhesive primers, sealant primers, surface preparation and cleanup solvents in the following operations:

- (a) Tire repair operations, provided the label on the adhesive states “For Tire Repair Only”;
- (b) In the assembly, repair and manufacture of aerospace or undersea-based weapon systems;
- (c) In the manufacture of medical equipment; and

- (d) Plaque laminating operations in which adhesives are used to bond clear, polyester acetate laminate to wood with lamination equipment installed prior to July 1, 1992.

740.3 The provisions of this chapter, except §739.1, shall not apply if the total VOC emissions from all adhesives, sealants, adhesive primers and sealant primers applied at the stationary source are less than 200 lbs per calendar year, or an equivalent volume.

740.4 The provisions of §§ 739.1 and 739.4 shall not apply to the use of any adhesives, sealants, adhesive primers, sealant primers, cleanup solvents and surface preparation solvents provided the total volume of non-complying adhesives, sealants, primers, and cleanup solvents applied facility-wide does not exceed 55 gallons per calendar year.

740.5 Any person claiming exemption pursuant to §§ 740.2 through 740.4 shall record and maintain monthly operational records sufficient to demonstrate compliance, and in accordance with §741.

740.6 This rule shall not apply to a manufacturer or distributor who sells, supplies or offers for sale in the District of Columbia any adhesive, sealant, adhesive primer or sealant primer that does not comply with §739.1 provided that such manufacturer or distributor makes and keeps records demonstrating:

- (a) The adhesive, sealant, adhesive primer or sealant primer is intended for shipment and use outside of the District of Columbia; and
- (b) The manufacturer or distributor has taken reasonable precautions to assure that the adhesive, sealant, adhesive primer or sealant primer is not distributed to, or within, the District of Columbia.

740.7 Section 740.4 shall not apply to any adhesive, sealant, adhesive primer or sealant primer that is sold, supplied or offered for sale by any person to a retail outlet in the District of Columbia.

740.8 Section 739.1 shall not apply to the sale of any adhesive, sealant, adhesive primer or sealant primer to a person using add-on air pollution control equipment, pursuant to §739.5.

741 ADHESIVES AND SEALANTS – ADMINISTRATIVE REQUIREMENTS

741.1 Each person subject to §§ 738 through 740 shall maintain records demonstrating compliance with the regulations, including, but not limited to, the following information:

- (a) A list of each adhesive, sealant, adhesive primer, sealant primer cleanup solvent and surface preparation solvent in use and in storage;
- (b) A data sheet or material list which provides the material name, manufacturer identification, and material application;
- (c) Catalysts, reducers or other components used and the mix ratio;
- (d) The VOC content of each product as supplied;
- (e) The final VOC content or vapor pressure, as applied; and
- (f) The monthly volume of each adhesive, sealant, adhesive primer, sealant primer, cleanup or surface preparation solvent used.

741.2 Any person who complies with §739.2 of this chapter through the use of add-on air pollution control equipment shall record the key operating parameters for the control equipment, including but not limited to, the following information:

- (a) The volume used per day of each adhesive, sealant, adhesive primer, sealant primer or solvent that is subject to a VOC content limit in Table 1 and that exceeds such a limit;
- (b) On a daily basis, the combustion temperature, inlet and exhaust gas temperatures and control device efficiency, as appropriate, pursuant to §739.5 of this chapter;
- (c) Daily hours of operation; and
- (d) All maintenance performed including the date and type of maintenance.

741.3 All records made to determine compliance with this chapter shall be maintained for five (5) years from the date such record is created and shall be made available to the District of Columbia within 90 days of a request.

741.4 For adhesives, sealants, adhesive primers and sealant primers subject to the laboratory testing exemption pursuant to §740.1(a) of this rule, the person conducting the testing shall make and maintain records of all such materials used, including, but not limited to, the product name, the product

category of the material or type of application, and the VOC content of each material.

742 ADHESIVES AND SEALANTS – COMPLIANCE PROCEDURES AND TEST METHODS

742.1 Except as provided in §§ 742.3, 742.4, and 742.5, the VOC and solids content of all non-aerosol adhesives, adhesive primers, and cleaning solvents, shall be determined using U.S. EPA Reference Method 24 (40 CFR Part 60, Appendix A) or SCAQMD Method 304.

742.2 The organic content of exempt organic compounds shall be determined using ASTM D4457-85.

742.3 The VOC content of any plastic welding cement adhesive or primer shall be determined using SCAQMD Method 316A.

742.4 To determine if a diluent is a reactive diluent, the percent of the reactive organic compound that becomes an integral part of the finished materials shall be determined using SCAQMD Method 316A.

742.5 The composite vapor pressure of organic compounds in cleaning materials shall be determined by quantifying the amount of each compound in the blend using gas chromatographic analysis (ASTM E 260-91) for organics and ASTM D3792-79 for water content, as applicable, and the following equation:

$$Pp_c = \frac{\sum_{i=1}^n (W_i)(VP_i)/Mw_i}{W_w/Mw_w + \sum_{i=1}^n W_e/Mw_e + \sum_{i=1}^n W_i/Mw_i}$$

where:

Ppc = VOC composite partial pressure at 20°C, in mm Hg;

Wi = Weight of the "i"th VOC compound, in grams, as determined by ASTM E 260-91;

Ww = Weight of water, in grams as determined by ASTM D 3792-86;

We = Weight of the "i"th exempt compound, in grams, as determined by ASTM E 260-91;

Mwi = Molecular weight of the "i"th VOC compound, in grams per g-mole, as given in chemical reference literature;

Mww = Molecular weight of water, 18 grams per g-mole;

Mwe = Molecular weight of the "i"th exempt compound, in grams per g-mole, as given in chemical reference literature; and
Vpi = Vapor pressure of the "i"th VOC compound at 20 C, in mm Hg, as determined by §741.6 of this chapter.

742.6 The vapor pressure of each single component compound may be determined from ASTM D2879-86 or may be obtained from a published source approved by the District, such as the sources referenced in 40 CFR 52.741, or any of the following sources:

- (a) The most recent edition of *The Vapor Pressure of Pure Substances*, Boulbik, Fried, and Hala; Elsevier Scientific Publishing Company, New York;
- (b) The most recent edition of *Perry's Chemical Engineer's Handbook*, McGraw-Hill Book Company;
- (c) The most recent edition of *CRC Handbook of Chemistry and Physics*, Chemical Rubber Publishing Company; and
- (d) The most recent edition of *Lange's Handbook of Chemistry*, John Dean, editor, McGraw-Hill Book Company; or
- (e) Additional sources approved by the SCAQMD or other California Air districts.

742.7 If air pollution control equipment is used to meet the requirements of this rule, the owner or operator shall make the following determinations:

- (a) The measurement of capture efficiency shall be conducted and reported in accordance with the recently approved U.S. EPA Technical Document, "*Guidelines for Determining Capture Efficiency*," issued January 9, 1995, or a District capture efficiency determination method approved by the U.S. EPA; and
- (b) The measurement of control efficiency shall be in accordance with U.S. EPA Methods 25, 25A, 25B, or CARB Method 100.

742.8 The active and passive solvent losses from spray gun cleaning systems shall be determined using SCAQMD's "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," dated October 3, 1989. The test solvent for this determination shall be any lacquer thinner with a minimum vapor pressure of 105 mm of Hg at 20 degrees Celsius, and the minimum test temperature shall be 15 degrees Celsius.

742.9 For adhesives that do not contain reactive diluents, grams of VOC per liter of adhesive, less water and exempt compounds, shall be calculated according to the following equation:

$$\text{Grams of VOC per liter of adhesive} = \frac{W_s - W_w - W_e}{V_m - V_w - V_e}$$

where:

W_s = weight of volatile compounds, in grams;

W_w = weight of water, in grams;

W_e = weight of exempt compounds, in grams;

V_m = volume of material, in liters;

V_w = volume of water, in liters; and

V_e = volume of exempt compounds, in liters.

742.10 For adhesives that contain reactive diluents, the VOC content of the adhesive is determined after curing. The grams of VOC per liter of adhesive, less water and exempt compounds, shall be calculated according to the following equation:

$$\text{Grams of VOC per liter of adhesive} = \frac{W_{rs} - W_{rw} - W_{re}}{V_{rm} - V_{rw} - V_{re}}$$

where:

W_{rs} = weight of volatile compounds not consumed during curing, in grams;

W_{rw} = weight of water not consumed during curing, in grams;

W_{re} = weight of exempt compounds not consumed during curing, in grams;

V_{rm} = volume of material not consumed during curing, in liters;

V_{rw} = volume of water not consumed during curing, in liters; and

V_{re} = volume of exempt compounds not consumed during curing, in liters.

742.11 Grams of VOC per liter of material shall be calculated according to the following equation:

$$\text{Grams of VOC per liter of materials} = \frac{W_s - W_w - W_e}{V_m}$$

where:

W_s = weight of volatile compounds, in grams;

W_w = weight of water, in grams;

We = weight of exempt compounds, in grams; and

V_m = volume of material, in liters.

742.12 Percent VOC by weight shall be calculated according to the following equation:

$$\% \text{ VOC by weight} = [(W_v / W)] \times 100$$

where:

W_v = weight of VOCs in grams; and

W = weight of material in grams.

743 ADHESIVES AND SEALANTS – CONTAINER LABELING

743.1 Each manufacturer of an adhesive, sealant, adhesive primer or sealant primer subject to this rule shall display the following information on the product container or label:

- (a) A statement of the manufacturer's recommendation regarding thinning, reducing, or mixing of the product, except that:
 - (1) This requirement does not apply to the thinning of a product with water; and
 - (2) If thinning of the product prior to use is not necessary, the recommendation must specify that the product is to be applied without thinning; and
- (b) The maximum or the actual VOC content of the product in accordance with §742, as supplied, displayed in grams of VOC per liter of product; and
- (c) The maximum or the actual VOC content of the product in accordance with §741, which includes the manufacturer's maximum recommendation for thinning, as applied, displayed in grams of VOC per liter of product.

735 744 PORTABLE FUEL CONTAINERS AND SPOUTS – GENERAL REQUIREMENTS

735.1 744.1 The requirements of §§735 744 through 741 752 apply to any person who sells, supplies, offers for sale, advertises or manufactures a portable fuel container or spout ~~on or after January 1, 2005~~ for use in the District of

Columbia, except as provided in ~~§737~~ 746.

~~744.2~~ No person shall sell, supply, offer for sale, advertise, or manufacture for sale in the District of Columbia a portable fuel container or spout or both portable fuel container and spout after July 1, 2007 unless said portable fuel container or spout or both portable fuel container and spout is covered by a CARB Executive Order, except as provided in §746.

~~735.2~~ ~~744.3~~ For purposes of §§~~736~~ 745 through ~~741~~ 752 and of any definitions in §799 applicable to §§~~736~~ 745 through ~~741~~ 752 the District incorporates by reference rules and test methods from the Code of Federal Regulations (CFR), the California Air Resources Board (CARB), and Title 13, California Code of Regulations, sections 2250-2298, where specifically cited. These materials are incorporated in their versions current as of January 1, 2004, unless otherwise indicated in §§~~736~~ 745 through ~~741~~ 752 and 799.

~~735.3~~ ~~744.4~~ Each part of §§~~735~~ 744 through ~~741~~ 752 shall be deemed severable, and in the event that any part is held to be invalid, the remainder continues in full force and effect.

~~736~~ 745 **PORTABLE FUEL CONTAINERS AND SPOUTS –
PERFORMANCE STANDARDS AND TEST PROCEDURES**

~~736.1~~ ~~745.1~~ During the time period beginning 30 days after the date of filing of this subsection with the Secretary of State, and ending June 30, 2007, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any portable fuel container and spout which, at the time of sale or manufacture, does not meet all of the following Performance Standards for Spill-Proof Systems. A portable fuel container shall meet all of the following Performance Standards for Spill-Proof systems, except as provided in ~~§737~~ 746:

- (a) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;
- (b) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;
- (c) Has only one opening for both filling and pouring;
- (d) Provides a fuel flow rate and fill level of:
 - (1) Not less than one half gallon per minute for portable fuel containers with a nominal capacity of:

- (A) ~~Less than or equal to 1.5 gallons and fills to a level less than or equal to one (1) inch below the top of the target fuel tank opening; or~~
- (B) ~~Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill proof system clearly displays the phrase "Low Flow Rate" in type of thirty four (34) point or greater on each spill proof system or label affixed to the product, and on the accompanying package, if any;~~
- (2) ~~Not less than one (1) gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or~~
- (3) ~~Not less than two (2) gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons;~~
- (ed) Does not exceed a permeation rate of 0.4 grams per gallon per day; and
- (fe) Is warranted by the manufacturer for a period of not less than one (1) year against defects in materials and workmanship.

~~736.2~~ 745.2 Upon the effective date of this regulation through June 30, 2007, no person shall sell, supply, offer for sale, or manufacture for sale in the District of Columbia any spout which, at the time of sale or manufacture, does not meet the following Performance Standards for Spill-Proof Spouts. ~~A spout shall meet all of the following performance standards for spill proof spouts, except as provided in §737~~ 746:

- (a) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;
- (b) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel; and
- (c) ~~Provides a fuel flow rate and fill level of:~~
 - (1) ~~Not less than one half gallon per minute for portable fuel containers with a nominal capacity of:~~

- (A) ~~Less than or equal to 1.5 gallons and fills to a level less than or equal to one (1) inch below the top of the target fuel tank opening; or~~
 - (B) ~~Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one (1) inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of thirty four (34) point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed to the spout;~~
 - (2) ~~Not less than one (1) gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or~~
 - (3) ~~Not less than two (2) gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons; and~~
- (dc) Is warranted by the manufacturer for a period of not less than one (1) year against defects in materials and workmanship.

745.3 Except as provided in §746, every portable fuel container, spout, or portable fuel container and spout produced on or after July 1, 2007 that is manufactured for sale, advertised for sale, sold, or offered for sale in the District of Columbia or that is introduced, delivered or imported into the District of Columbia for introduction into commerce and that is subject to any of the standards prescribed in this article and documents incorporated by reference therein, must be certified for use and sale by the manufacturer through CARB and covered by a CARB Executive Order.

745.4 The criteria for obtaining certification, including all test procedures for determining certification and compliance with the standards applicable to portable fuel containers, spouts, or portable fuel containers and spouts produced on or after July 1, 2007 that are manufactured for sale, advertised for sale, sold, or offered for sale in the District of Columbia, or that are introduced, delivered or imported into the District of Columbia for introduction into commerce and that are subject to any of the standards prescribed in this article and documents incorporated by reference therein are set forth in "CP-501, Certification Procedure for Portable Fuel

Containers and Spill-Proof Spouts,” adopted by CARB July 26, 2006, including any subsequent amendments.

~~736.3~~ The manufacturer of portable fuel containers or spouts shall perform compliance tests in accordance with ~~§739~~ to show that their product meets the performance standards of §§~~736~~ through ~~741~~ prior to allowing the product to be offered for sale in the District of Columbia. The manufacturer must maintain records of these compliance tests for as long as the product is available for sale in the District of Columbia and make those test results available to the Department within sixty (60) days of request.

~~736.4~~ 745.5 Compliance with the performance certification or compliance standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and District of Columbia statutes and regulations, including but not limited to, fire codes, safety codes, and other safety regulations.

745.6 Notwithstanding the provisions of §§ 745.1, 745.2 and 745.3, a portable fuel container or spout or both portable fuel container and spout manufactured before the effective date of this regulation, may be sold, supplied, or offered for sale until one year after the effective date of this regulation, if it is labeled or designated for use solely with kerosene and if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

~~737~~ 746 **PORTABLE FUEL CONTAINERS AND SPOUTS – EXEMPTIONS FROM PERFORMANCE STANDARDS**

~~737.1~~ 746.1 The following shall be exempt from compliance with §§~~735~~ 744 through ~~736~~ 745:

- (a) Any portable fuel container or spout manufactured in the District of Columbia for shipment, sale, and use outside of the District of Columbia;
- (b) A manufacturer or distributor who sells, supplies, or offers for sale in the District of Columbia, a portable fuel container or spout that does not comply with the performance standards specified in ~~§736~~ §§ 745.1 or §745.2 or the certification and compliance standards specified in §745.4, as long as the manufacturer or distributor can demonstrate that:

- (1) The portable fuel container or spout is intended for

shipment and use outside of the District of Columbia; and

- (2) The manufacturer or distributor has taken reasonable prudent precautions to ensure that the portable fuel container or spout is not distributed in the District of Columbia;
- (c) Paragraph (b) of this subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale by any person to retail outlets in the District of Columbia;
- (d) Safety cans meeting the requirements of Chapter 17, Title 29, Part 1926, Subpart F of the Code of Federal Regulations (29 CFR §1926.150 et seq.);
- (e) Portable fuel containers with a nominal capacity less than or equal to one (1) quart;
- (f) Rapid refueling devices with nominal capacities greater than or equal to four (4) gallons, provided such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions or either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank;
- (g) Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine;
- (h) Closed-system portable fuel containers that are used exclusively for fueling remote control airplanes;
- ~~(h) Portable fuel containers and spouts that have been granted a consumer product exemption by the Department pursuant to §740, or a variance pursuant to §741; and~~
- ~~(i) Portable fuel containers and spouts that have been granted an exemption by the CARB Consumer Product Regulation, under the Innovative Products provisions in Subchapter 8.5, Article 2, §94511, or Subchapter 8.5, Article 1, §94503.5 of Title 17 of the California Code of Regulations. This exemption shall continue for the period of time that the CARB Innovative Products exemption remains in effect, provided that the manufacturer complies with §740.~~

- (i) The performance standards specified in §§ 745.1 or 745.2 do not apply if a portable fuel container or spout are certified for use and sale by the manufacturer through CARB and covered by a CARB Executive order prior to June 30, 2007.

738- 747 **PORTABLE FUEL CONTAINERS AND SPOUTS – LABELING REQUIREMENTS**

738.1 747.1 Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with ~~§736.1~~ 745.1 must clearly display the following on each spill-proof system:

- (a) The phrase “Spill-Proof System”;
- (b) A date of manufacture or date code; and
- (c) A representative code identifying the portable fuel container or spout as subject to and complying with ~~§736.1~~ 745.1.

738.2 747.2 Each manufacturer of a spout subject to and complying with ~~§736.2~~ 745.2 must clearly display the following on the accompanying package, or spout sold without packaging, on either the spout or a label affixed to the spout:

- (a) The phrase “Spill-Proof Spout”;
- (b) A date of manufacture or date code; and
- (c) A representative code identifying the spout as subject to and complying with ~~§736.2~~ 745.2.

747.3 Each manufacturer of a portable fuel container or portable fuel container and spout subject to and complying with §745.3 must clearly display on each spill-proof system:

- (a) The phrase “Spill-Proof Spout”;
- (b) A date of manufacture or date code; and
- (c) A representative code identifying the Executive Order Number issued by CARB for the portable fuel container or portable fuel container and spout.

747.4 Each manufacturer of spout subject to and complying with §745.3 must clearly display on the accompanying package, or for spill-proof spouts sold packaging, on either the spill-proof spout or a label affixed thereto:

- (a) The phrase "Spill-Proof Spout";
- (b) The date of manufacture or date code; and
- (c) A representative code identifying the Executive Order Number
 issued by CARB for the spout.

~~738.3~~ 747.5 Each manufacturer subject to ~~§738.1~~ 747.1, ~~or §738.2~~ 747.2, 747.3 or 747.4 shall file an explanation of both the date code and representative code with the Department no later than three (3) months after the effective date of this regulation or within three (3) months of production, and within three (3) months after any change in coding.

~~738.4~~ ~~Each manufacturer subject to §738.1 and or §738.2 shall clearly display a fuel flow rate on each spill proof system or spill proof spout, or label affixed thereto, and on any accompanying package.~~

~~738.5~~ 747.6 Each manufacturer of a spout subject to ~~§738.2~~ 747.2 or 747.4 shall clearly display the make, model number, and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with ~~§736.1~~ 745.1 on the accompanying package, or for spouts sold without packaging, on either the spout, or a label affixed to the spout.

~~738.6~~ 747.7 Manufacturers of portable fuel containers not subject to or not in compliance with ~~§736~~ 745 shall not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed to the product, or on any accompanying package.

~~738.7~~ 747.8 Each manufacturer of a portable fuel container or spout subject to and complying with ~~§736~~ 745, that due to its design or other features cannot be used to refuel one (1) or more on-road motor vehicle, must clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of thirty-four (34) point or greater on each of the following:

- (a) For a portable fuel container or portable fuel container and spout sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and
- (b) For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

739 748 PORTABLE FUEL CONTAINERS AND SPOUTS – TESTING PROCEDURES

739.1 748.1 Testing to determine compliance with ~~§736.2~~ 745.2 shall be performed by using the following test procedures:

- (a) Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts, adopted by CARB on July 6, 2000~~;~~, as amended July 26, 2006 and including any subsequent amendments, which are incorporated by reference herein; and
- (b) Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts, adopted by CARB on July 6, 2000; and, including any subsequent amendments, which are incorporated by reference herein.
- (c) ~~Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts, adopted by CARB on July 6, 2000.~~

739.2 748.2 Testing to determine compliance with ~~§736.1~~ 745.1 shall be performed by using all test procedures in ~~§739.1~~ 748.1 above and Test Method 513, Determination of Permeation Rate For Spill-Proof Systems, adopted by CARB on July 6, 2000, and including any subsequent amendments, which are incorporated by reference herein.

739.3 748.3 Alternative testing methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Department.

748.4 Test procedures referred to in this article can be obtained from the Department and may be available at <http://www.arb.ca.gov>.

749 PORTABLE FUEL CONTAINERS AND SPOUTS – CERTIFICATION AND COMPLIANCE TEST PROCEDURES

749.1 Testing to determine compliance with §745.3 shall be performed by using test procedures specified in CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts, adopted by CARB on July 26, 2006, including any subsequent amendments, which are incorporated by reference herein.

749.2 Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the Department.

749.3 Test procedures referred to in this section can be obtained from the Department and may be available at <http://www.arb.ca.gov>.

750 PORTABLE FUEL CONTAINERS AND SPOUTS – ENFORCEMENT

750.1 If the Department finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, or offering for sale in the District of Columbia a portable fuel container or spout, or both portable fuel container and spout that do not comply with the requirements set forth in this article, the Department may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of such noncompliant portable fuel containers or spouts or both portable fuel containers and spouts, in the District of Columbia pursuant to 20 DCMR Chapter 1. The Department may also assess penalties to the extent permissible under 20 DCMR 105.

750.2 Before seeking remedial action against any manufacturer, distributor, or retailer the Department will consider any information provided by the manufacturer, distributor, or retailer.

740 751 PORTABLE FUEL CONTAINERS AND SPOUTS – INNOVATIVE PRODUCT EXEMPTION

751.1 Portable fuel containers or spouts or both portable fuel containers and spouts which have been granted an innovative product exemption by the CARB shall be exempt from the requirements in §745 for the period of time that the CARB Innovative Products exemption remains in effect.

740.1 751.2 Any manufacturer claiming an exemption on the CARB Innovative Products basis shall submit to the Department, ~~upon request~~, a copy of the CARB exemption decision, including but not limited to, the executive order, and all conditions established by CARB applicable to the exemption.

740.2 751.3 The District may exempt a portable fuel container or spout from one (1) or more of the requirements of ~~§736~~ 745 if a manufacturer demonstrates by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing;

(a) For the purposes of this subsection, “representative spill-proof system” or a “representative spill-proof spout” means a portable

fuel container or spout or both portable fuel container and spout which, at the time of exemption, meets the performance standards specified in §736 745 or the Certification Requirements Specified in CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts, adopted by CARB July 26, 2006, including any subsequent amendments;

- (b) A manufacturer shall submit an application in writing to the Department for an innovative product exemption ~~claimed under this section~~ according to the following requirements:
 - (1) The application must include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data;
 - (2) The applicant must provide any information necessary to enable the Department to establish enforceable conditions for granting the exemption; and
 - (3) All information including proprietary data submitted by a manufacturer pursuant to this section shall be handled in accordance with the District of Columbia confidentiality requirements in 20 DCMR 106;
- (c) Within thirty (30) days of receipt of the exemption application the Department shall determine whether an application is complete as provided in the applicable District of Columbia laws or regulations;
- (d) Within ninety (90) days after an application has been deemed complete, the Department will determine whether, under what conditions, and to what extent, an exemption from the requirements of §736 745 will be permitted;
 - (1) The applicant and the Department may mutually agree to a longer time period for reaching a decision;
 - (2) An applicant may submit additional supporting documentation before a decision has been reached; and
 - (3) The Department shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to ensure that emissions from use of the product will meet the performance standards specified in §736 745, and that such emissions reductions can be enforced;

- (e) In granting an innovative product exemption for a portable fuel container or spout, the Department shall specify the test methods for determining conformance to the conditions established. The test methods may include criteria for reproducibility, accuracy, and sampling and laboratory procedures;
- (f) For any portable fuel container or spout for which an innovative product exemption has been granted pursuant to this section, the manufacturer shall notify the Department in writing at least thirty (30) days before the manufacturer changes a product's design, delivery system, or other factors that may effect the VOC emissions during recommended usage. The manufacturer shall notify the Department within thirty (30) days after the manufacturer learns of any information that would alter the emissions estimates submitted to the Department in support of the exemption application;
- (g) If the Performance Standards specified in ~~§736~~ 745 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this subsection, have no force and effect as of the effective date of the amended performance standards; and
- (h) If the Department believes that a portable fuel container or spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may hold a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*, prior to a final determination.

741 752 PORTABLE FUEL CONTAINERS AND SPOUTS – VARIANCE

752.1 Portable fuel containers and spouts or both portable fuel containers and spouts which have been granted a variance by CARB shall be exempt from the requirements in §745 for the period of time that the CARB variance remains in effect.

752.2 Any manufacturer claiming such a variance on this basis must submit to the Department a copy of the CARB variance decision (i.e. the Executive Order), including all conditions established by CARB as applicable to the variance.

~~741.1~~ 752.3 Any person or manufacturer who cannot comply with the requirements set forth in ~~§736~~ 745, due to extraordinary reasons beyond the person's

reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following information:

- (a) The specific grounds upon which the variance is sought;
- (b) The proposed dates by which compliance with the provisions of §~~736~~ 745 will be achieved; and
- (c) A compliance report detailing the methods by which compliance will be achieved.

~~741.2~~ 752.4 No variance shall be granted by the Department unless all of the following findings are made:

- (a) Due to circumstances beyond the reasonable control of the applicant, required compliance with §~~736~~ 745 would result in extraordinary economic hardship;
- (b) The public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and
- (c) The compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

~~741.3~~ 752.5 Any approval of a variance by the Department shall specify a final compliance date wherein compliance with the requirements of §~~736~~ 745 will be achieved. Any approval of a variance shall contain a condition that specifies increments of progress necessary to ensure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing in accordance with § 752.7, finds necessary to carry out the purposes of this regulation.

~~741.4~~ 752.6 A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

~~741.5~~ 752.7 Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of §~~736~~ 745 after holding a public hearing in accordance with the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-501 *et seq.*

~~742~~ 753 SOLVENT CLEANING – GENERAL REQUIREMENTS